



**COUNTRY  
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# The Legal 500 Country Comparative Guides

## Australia

# GAMBLING LAW

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This country-specific Q&A provides an overview of gambling law laws and regulations applicable in Australia.

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# AUSTRALIA

## GAMBLING LAW



### 1. What is the legal definition of gambling?

Although it is difficult to provide an all-encompassing legal definition of gambling in Australia, generally speaking, gambling is defined as an activity which involves staking money or something of real-world value on the outcome of an event that is determined in full or in part by chance, such as a sporting event or a horse race, with the intent of winning a prize or something else of value.

Gambling regulation in Australia also extends to apply to 'trade promotions' (offered referred to in other jurisdictions as 'sweepstakes'), being free-to-enter competitions for the promotion of trade. While such activities are generally permissible, subject to compliance with requirements in relation to factors such as draw integrity, publication of results, eligible prize types and others, some Australian states and territories require the promoter to first obtain a permit or other form of authorisation from the relevant regulator.

### 2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

In Australia there is no single overarching statute regulating gambling activities, nor is there a single overarching gambling authority. Instead, gambling in Australia is regulated at state, territory, and federal levels. Each of Australia's eight mainland states and territories separately regulates gambling activities within each of their respective jurisdictions. In addition, a series of Federal statutes also cover certain aspects of gambling activity throughout Australia.

The *Interactive Gambling Act 2001* (Cth) for example, regulates interactive (or online) gambling services, whilst state and territory legislation regulate land-based and online gambling activities and sets out the regulatory frameworks for different types of gambling including casinos, sports betting, poker machines and lotteries. The *Interactive Gambling Act 2001* (Cth)

prevails over state and territory legislation to the extent there are inconsistencies.

Set out below is a list of the primary legislation governing gaming, betting, lotteries, and social/skill arrangements for each Australian state and territory, as well as at the federal level. For completeness, the authors note that the list of gambling-related legislation below is not an exhaustive list. There are many pieces of legislation that are incidental to gambling activity (for example, legislation setting the applicable gambling tax rates). There are also various subordinate legislative instruments, including regulations, which have not been included.

#### Vic

- Casino (Management Agreement) Act 1993 (Vic).
- Casino Control Act 1991 (Vic).
- Gambling Regulation Act 2003 (Vic).

#### NSW

- Betting and Racing Act 1998 (NSW).
- Casino Control Act 1992 (NSW).
- Community Gaming Act 2018 (NSW).
- Gaming Machines Act 2001 (NSW).
- Public Lotteries Act 1996 (NSW).
- Unlawful Gambling Act 1998 (NSW).
- Totalizator Act 1997 (NSW).

#### Qld

- Breakwater Island Casino Agreement Act 1984 (Qld).
- Brisbane Casino Agreement Act 1992 (Qld).
- Cairns Casino Agreement Act 1993 (Qld).
- Casino Control Act 1982 (Qld).
- Charitable and Non-Profit Gaming Act 1999 (Qld).
- Gaming Machine Act 1991 (Qld).
- Interactive Gambling (Player Protection) Act 1998 (Qld).
- Jupiters Casino Agreement Act 1983 (Qld).

- Keno Act 1996 (Qld).
- Lotteries Act 1997 (Qld).
- Queen's Wharf Brisbane Act 2016 (Qld).
- Wagering Act 1998 (Qld).

- Interactive Gambling Act 2001 (Cth).

### 3. Which body/ies regulate gambling?

#### i. The State and Territory-based regulators

The key responsibilities assigned to the state and territory gambling regulators include granting licences, monitoring compliance of gambling operators and enforcement of legislation where necessary. Set out below are the regulators responsible for regulating gambling activity in each Australian state and territory:

##### a) Victoria (Vic)

The Victorian Gambling and Casino Control Commission is Vic's independent gambling authority responsible for licensing and compliance.

The Office of Liquor, Gaming and Racing is a division within Vic's Department of Justice and Regulation responsible for policy, legislation, regulation, and major licensing.

##### b) New South Wales (NSW)

Liquor and Gaming New South Wales (L&GNSW) sits within the NSW Department of Customer Service and is responsible for policy, licensing, and compliance. Separately, the Independent Liquor and Gaming Authority (ILGA) is an independent statutory decision-maker responsible for a range of casino, liquor, registered club, and gaming machine regulatory functions. A number of ILGA's routine licensing functions are delegated to L&GNSW.

##### c) Queensland (Qld)

The Queensland Office of Liquor and Gaming Regulation (QOLGR) is responsible for licensing and compliance and the Office of Regulatory Policy (QORP) is responsible for policy and legislative development for the regulation of liquor, gaming, and fair trading, as well as harm minimisation programmes for the liquor and gambling industries. The QOLGR and QORP sit within the State's Department of Justice and Attorney-General.

##### d) Australian Capital Territory (ACT)

The Gambling and Racing Commission sits within the portfolio of the Minister for Regulatory Services and is the ACT's independent gambling authority responsible for licensing, compliance, and education.

##### e) South Australia (SA)

Consumer and Business Services sits within the

#### **ACT**

- Casino Control Act 2006 (ACT).
- Gaming Machine Act 2004 (ACT).
- Interactive Gambling Act 1998 (ACT).
- Lotteries Act 1964 (ACT).
- Pool Betting Act 1964 (ACT).
- Race and Sports Bookmaking Act 2001 (ACT).
- Racing Act 1999 (ACT).
- Totalisator Act 2014 (ACT).
- Unlawful Gambling Act 2009 (ACT).

#### **SA**

- Authorised Betting Operations Act 2000 (SA).
- Gambling Administration Act 2019 (SA).
- Casino Act 1997 (SA).
- Gaming Machines Act 1992 (SA).
- Lottery and Gaming Act 1936 (SA).
- State Lotteries Act 1966 (SA).

#### **Tas**

- Gaming Control Act 1993 (Tas).

#### **WA**

- Betting Control Act 1954 (WA).
- Casino (Burswood Island) Agreement Act 1985 (WA).
- Casino Control Act 1984 (WA).
- Gaming and Betting (Contracts and Securities) Act 1985 (WA).
- Gaming and Wagering Commission Act 1987 (WA).
- Racing and Wagering Western Australia Act 2003 (WA).
- Racing Bets Levy Act 2009 (WA).

#### **NT**

- Gaming Control Act 1993 (NT).
- Gaming Machine Act 1995 (NT).
- Racing and Betting Act 1983 (NT).
- Unlawful Betting Act 1989 (NT).
- Totalisator Licensing and Regulation Act 2000 (NT).

#### **Federal**

- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).
- Financial Transaction Reports Act 1988 (Cth).

Attorney-General's Department and is responsible for policy, licensing, and compliance in relation to betting, casinos, gaming machines and lotteries.

The Lotteries Commission of South Australia sits within the Auditor General's Department and has the primary function of promoting and conducting lotteries in SA. It has appointed a master agent to operate the Commission's brands and products.

#### **f) Tasmania (Tas)**

The Tasmanian Liquor and Gaming Commission sits within the Department of Treasury and Finance and is Tas' independent gambling authority responsible for licensing and compliance.

#### **g) Western Australia (WA)**

The Western Australian Department of Racing, Gaming and Liquor sits within the portfolio of the Minister for Racing and Gaming and is responsible for policy, licensing, and compliance matters.

#### **h) Northern Territory (NT)**

The NTRC is largely responsible for compliance matters.

Licensing NT is responsible for licensing matters affecting all gambling activities in the NT.

NTRC and Licensing NT sit within the NT Department of the Attorney-General and Justice.

For completeness, it is worth noting that, to a lesser extent, local government bodies in most states and territories also regulate gambling from a local government and town planning perspective, but typically only as it relates to gaming machines and their operation within the relevant municipal district.

### **ii. Federal regulators**

The Australian Constitution provides the Federal government with powers to regulate and govern, among other things, telecommunications, money and trade amongst the states and territories.

Using these powers, the Federal government has enacted legislation regulating, amongst other things, interactive gambling, anti-money laundering and counter-terrorism financing (AML/CTF) and consumer and competition protections (also known as anti-trust matters in some other jurisdictions).

Set out below are the relevant regulatory bodies and a brief description of how they regulate gambling:

#### **a) Interactive gambling**

The ACMA is the body responsible for media and communications regulation throughout Australia, including monitoring and enforcing the regulation of gambling online and over the telephone (referred to as the interactive gambling laws).

The ACMA monitors compliance with and enforces the interactive gambling laws.

Australia's Federal interactive gambling laws prohibit certain activities, such as:

- online casinos, slot machines and poker.
- online wagering services that accept 'in-play' betting on live sports events.
- online wagering services provided without a licence issued by an Australian State or Territory.
- online instant lotteries; and
- providing or facilitating the provision of credit by certain interactive wagering service providers to their customers.

The ACMA has the power to, amongst other things, instigate civil proceedings in Australia, notify border protection agencies of the names of directors/principals of offending illegal offshore operators (who may then be placed on a 'movement alert list' thereby disrupting any travel to Australia) and liaise with foreign regulators to stop alleged offenders.

#### **b) AML/CTF regulation**

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is the regulator responsible for detecting, deterring, and disrupting criminal abuse of the financial system, including money laundering and terrorism financing.

Under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act), certain gambling activities are classified as 'designated services' with providers of such services being 'reporting entities' required to, among other things, register with AUSTRAC, develop, and maintain a compliant AML/CTF Program and to report certain transactions to AUSTRAC, including by way of threshold transaction reports (TTRs) and suspicious matter reports (SMRs).

Failure to comply with the AML/CTF Act, including not maintaining a compliant AML/CTF Program and not filing TTRs and/or SMRs (or filing them late), can result in large civil penalties and possible criminal exposure. For example, in 2017 a large Australian gambling company paid an AUS \$45 million civil penalty to AUSTRAC for

failing to comply with certain requirements under the AML/CTF Act.

### c) Competition

The Australian Consumer and Competition Commission (ACCC) is responsible, under the Competition and Consumer Act 2010 (Cth) (CCA), for, amongst other things, enforcing Australian consumer protection laws. From a gambling perspective, the ACCC monitors compliance by gambling service providers of their obligations under the CCA, including gambling advertising (to ensure the consumer is not being treated unconscionably or unfairly, in breach of the CCA). It also takes appropriate enforcement action where it deems necessary.

### iii. Land-based gambling

Land-based gambling is regulated predominately through state and territory legislation with some exceptions, such as the Anti-Money Laundering and Counter Terrorism Financing Act 2001 (Cth) (AML/CTF Act) which is a federal piece of legislation that also applies to land-based gambling operators. Land-based gambling can be understood through the various licences generally available under state and territory legislation:

- **Off-course betting in retail venues (Retail Wagering)**

Retail Wagering includes offering pari-mutuel (totalisator) bets on racing (thoroughbred, greyhound, and harness) and some sports as well as fixed-odds betting on racing, virtual/simulated racing, sports, and other approved events. Generally, Retail Wagering is offered by the state and territory totalisator agency boards (TABs) pursuant to a sole licence, thereby providing the TABs with a form of retail exclusivity. The TABs offer their land-based Retail Wagering in dedicated retail venues, racecourses, or terminals in hotels and clubs.

- **Lottery products**

Like Retail Wagering, an exclusive licence has been granted to provide land-based lottery products in each state or territory. These products are generally available for purchase by consumers from retailers, with the most prevalent location being newsagents.

- **Licensed gaming machine operators (i.e., poker/slot machines)**

Generally, gaming machines such as slot or poker machines (colloquially referred to as 'pokie' machines)

are permitted under the various state and territory licensing regimes in casinos, hotels, and clubs (except for Western Australia where gaming machines are only permitted in casinos). The regulation (including the total number of gaming machines available) differs in each state and territory. For example, in New South Wales, the socio-economic impact on the venue/area is considered during any application to raise the number of gaming machines (see Part 3, Division 3 of the Gaming Machine Regulation 2019 (NSW)). Additionally in Victoria, couples a venue, area, and jurisdiction cap on the number of gaming machines with a mandatory pre-commitment system (which players can opt-out of).

- **Land-based casinos**

The number of casino licences available is limited. Typically, there is only one per state and territory, except in the case of current casino licences held in each of Queensland, Northern Territory. In NSW, there is one casino licence issued to The Star. Recent legislative changes relaxed the limit, and Crown Resorts gained a restricted gaming licence for their development in Barangaroo.

This licence was subject to an inquiry under section 143 of the Casino Control Act 1992 (NSW), and it was found not to be a suitable person to hold such a licence (known locally as The Bergin Inquiry). Crown Resorts has subsequently been authorised to commence operations in Barangaroo under a conditional licence following extensive consultation with the Independent Liquor and Gaming Authority.

### iv. Remote gambling

As stated previously, online gambling is regulated at a state, territory, and federal level. To offer remote (online) gambling services to Australians is a two-step process. Firstly, the type of online gambling must not be prohibited under the IGA. Some of the unlawful kinds of online gambling include online casinos, bingo, and poker. Secondly, to offer lawful types of online gambling, there is a requirement to hold a state or territory-issued licence that enables online gambling.

The Federal regulator, the Australian Communication and Media Authority (ACMA) administer the IGA. Recently the ACMA has become more proactive in its enforcement of the IGA and regularly requests internet service providers block websites that breach the IGA or are for unlicensed operators operating in or offering services into Australia. A key focus of the ACMA has been combating illegal online casinos from being offered into Australia. More recently, the focus has expanded to target affiliate advertising websites that drive traffic towards illegal gambling websites.

## v. Ancillary matters

Depending on the gambling service, ancillary licences may be required in addition to the principal licence granted to the operator to conduct the gambling business. For example, in addition to licences granted to operators that conduct gambling activities in a casino or other land-based venue, separate licences are required to be held by manufacturers and suppliers of poker machines, as well as testing agents. In most cases, key employees or close associates of licensed operators are required to hold a separate licence, or at least be approved by the regulator prior to commencing their role.

### 4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

The duration of major operator licences depends upon the legislative framework in the relevant State or Territory and is subject to possible change upon a licence renewal or new licence being issued.

There are various current casino licences which are perpetual, whereas a number of others currently expire between 2050 and 2093. In relation to wagering and betting, apart from Vic and NT (where the Licences expire in 2024 and 2035, respectively) and WA (where Retail Wagering and betting is operated by the State but is currently subject to a privatisation process), the expiry dates of current Retail Wagering Licences are also similarly long-dated and range between 2062 and 2100.

In the case of lotteries, aside from Tas (which operates under renewable five-year permits linked to Victorian and Queensland licences) and WA (where lotteries are owned and operated by the State), the expiry dates are generally shorter than in relation to Retail Wagering; however, they still range between 2028 and 2072. Keno, as a similar product to lotteries, has a similar licence duration. Apart from Vic (where the licence expired in 2022 and two new non-exclusive licences were issued, each expiring in 2042), the key keno licences in Qld, NSW and ACT expire in 2047, 2050 and 2064, respectively.

Gaming machine permits/licences have typically been perpetual in Australia, other than in certain States such as Vic, which currently run for a period of 10 years (however, the term has been extended to 20 years in relation to entitlements which operate from August 2022

onwards).

Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and/or services used for gambling-related activities typically have perpetual Licences, which are often administrative in nature and remain on issue subject to the payment of periodic fees.

Casinos are generally subject to periodic licence reviews (often every five years).

Other than in extreme circumstances as highlighted in recent inquiries and Royal Commissions in the casino sector, the vulnerability of the above licences to revocation or suspension is low. It is rare for material proceedings or other materially adverse action to be initiated by gambling regulators against major licensees.

## Licences

An operator licence is required to conduct the following gambling activities in Australia:

### a. Casinos;

**b. Retail wagering (Retail Wagering)**, under which licence-holders (**Retail Wagering Licensees**) offer: (i) pari-mutuel (totalisator) betting on racing (thoroughbred, harness and greyhound); and (ii) fixed-odds betting on racing, virtual/simulated racing, sports and other approved events. With the exception of virtual/simulated racing (which is generally only offered in retail venues, including hotels and clubs), such betting is generally offered at racecourses, retail venues, online and by telephone. The Victorian Wagering and Betting Licence includes not only wagering and betting, but also the right to conduct a betting exchange;

### c. Lotteries;

### d. Keno; and

### e. Instant lotteries to persons in Australia.

These operator licences are nearly always State- or Territory-based and are typically monopolistic or very limited in numbers.

### f. Licensed Gaming Venue and gaming machines

A gaming venue licence, as well as a permit/licence for each gaming machine ('pokie' or 'slot' machine), is required to operate gaming machines in Australia.

The only exception to this is in relation to a casino operator licence, which typically includes permission to operate gaming machines within the casino premises.

The relatively new casino operator licence in NSW, issued for the Barangaroo casino, does not include permission to operate gaming machines and the NSW government has granted exclusivity to operate gaming machines to the other major NSW casino licensee until 2041.

#### g. Poker

While not permissible online, poker (outside of a casino) is typically permitted provided that no person (being the venue owner/operator or tournament organiser) gains a percentage or share of the amounts wagered.

#### h. Bingo

Laws differ between the States and Territories regarding bingo. If the gross proceeds are below a certain threshold, then in most States and Territories no licence is required to offer bingo.

#### i. Social Gaming and Skill Gaming

As a general rule, social games (no prize money) and skill games (no element of chance) are not classified as being a gambling activity and, as such, are not generally regulated under the relevant gambling laws.

Skill games with no element of chance may, when operated online, fall within certain 'interactive gaming' regimes regulated by State and Territory gambling regulators. For completeness, note that betting on fantasy sports in Australia is typically offered pursuant to a Corporate Bookmaker Licence.

#### j. Bookmaker Licence

Aside from Retail Wagering conducted by Retail Wagering Licensees, bookmaking in Australia is only permitted under a sports bookmaker licence issued in the Northern Territory (**Corporate Bookmaker Licence**), or alternatively an on-course bookmaker licence issued in a State or Territory (**On-course Bookmaker Licence**) to an individual (or sometimes incorporated) bookmaker licensed by the relevant racing controlling body (**On-course Bookmaker**).

There is no limit on the number of Corporate Bookmaker Licences the NT may issue and Corporate Bookmakers are only permitted to operate online and via telephone. By comparison, in a practical sense there is a limit on the number of On-course Bookmaker Licences which are capable of being issued (based on available stands). On-course Bookmakers can accept bets on-course, as well as over the telephone and via the internet where appropriately licensed.

Fantasy sports betting in Australia is typically permitted under a Corporate Bookmaker Licence.

#### h. Software service providers

Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and or services used for gaming related activities in Australia are required to hold a relevant licence or approval. For example, in accordance with the Gaming Control Act 1993 (Tas), the Tasmanian Liquor and Gaming Commission (**TLGC**) maintains a list of approved entities that provide testing services or otherwise manufacture or supply gaming equipment to gaming operators, casino operators or minor gaming operators within Tasmania (the **Roll of Recognised Manufacturers, Suppliers and Testers of Gaming Equipment or Roll**). A listing on the Roll can be contingent on complying with conditions imposed by the TLGC. A similar framework operates in other Australian jurisdictions, including Victoria.

Another example is the framework in New South Wales. In New South Wales, the following licences are available to those entities involved in the manufacturing, selling, servicing, or testing of gaming machines:

- Gaming machine technician licence;
- Gaming machine seller's licence;
- Gaming machine dealer's licence; and
- Gaming machine testing facility licence.

Each licence has distinct probity related checks and various obligations, including in relation to renewal and notification of change in ownership structure.

In respect of software suppliers to operators that hold a Corporate Bookmaker Licence or an On-Course Bookmaker Licence, such suppliers need not be licensed, however their software is subjected to stringent and comprehensive technical and compliance requirements before it is approved for use by operators.

For example, in the Northern Territory, each prospective holder of a Corporate Bookmaker Licence must use a system approved by the Northern Territory Racing Commission which meets prescribed requirements. The system and any material changes to it will be evaluated by the regulator or an approved evaluator. Information security management is independently audited against ISO/IEC 27001 requirements on an annual basis. Another example is in Victoria, where each On-course Bookmaker Licensee must use an 'approved betting system' (**ABS**) to take bets from customers. An ABS provider must ensure that its ABS meets rigorous certification and testing requirements from an independent third-party tester. In addition, probity checks are undertaken into



the ownership structure, operational and technical capability, financial capacity, criminal and disciplinary history of licensees.

## 5. Are any types of gambling products prohibited?

Online casino gaming is prohibited in Australia under the Interactive Gambling Act 2001 (Cth) (**Interactive Gambling Act**). However, a person may still apply for an 'internet gaming licence' in the Northern Territory and offer their gaming products outside of Australia in certain circumstances.

Online poker is also prohibited in Australia under the Interactive Gambling Act. There has been lobbying seeking its approval, on the basis of arguments that it is a game of skill but those efforts have not been successful to date.

Live (or 'in the run') betting on sport is also prohibited in an online environment in Australia. Live bets can be placed in licensed retail (i.e. land-based) outlets and over the telephone.

Finally, there are also prohibitions on offering betting on the outcome of a lottery.

## 6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.

### Application and renewal - betting

Online and land-based betting is regulated at a state, territory, and federal level. Given that most new entrants to the market who wish to offer betting will typically apply for a Northern Territory sports bookmaker licence, the key legislation which is relevant is the *Racing and Betting Act 1983* (NT). There is no limit on the number of licences which may be granted to Northern Territory licensed bookmakers and the licence will permit the offering of approved products into all Australian states and territories, as well as overseas jurisdictions in which it is lawful to do so.

#### a) Domestic licence types:

Apart from exclusive land-based licences (which also permit online sales) and which are typically long-dated, the only licence types available are for a Corporate Bookmaker Licence or an on-course bookmaker licence (with an approval to take bets over the telephone and

internet).

#### b) Application process:

A licence application may be submitted to Licensing NT for a sports bookmaker licence by a locally incorporated entity (generally a proprietary limited company) or an overseas entity which is registered in Australia as a foreign body.

An application for a Corporate Bookmaker Licence is completed utilising a paper-based form or alternatively online. The application form itself is a relatively brief document however the supporting documentation required is substantial. As part of the application process the applicant is required to provide information in respect of all persons who are on the Board of Directors of the applicant, shareholders (with probity conducted on those who hold at least 10% of the shareholding) as well as key management who will be associated with the business.

In determining whether to grant or refuse a licence, Licensing NT must have regard to whether the applicant:

- is of good repute, having regard to character, honesty, and integrity.
- is of sound and stable financial background.
- has or has arranged a satisfactory ownership, trust, or corporate structure.
- has or is able to obtain financial resources that are adequate to ensure the financial viability of the business proposed to be conducted and to obtain the services of persons who have sufficient experience in the management and operation of the business.
- has sufficient business ability to establish and maintain the business proposed to be conducted; and
- or any person to be involved in the management or operation of the business proposed to be conducted has any association with any person, body, or association who or which, in the opinion of Licensing NT, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources.

In addition, Licensing NT will have regard to whether each director, partner, trustee, executive officer and secretary and any other officer or person determined by Licensing NT to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.

The detailed information required of applicants includes



all typical probity information, as well as at least three years' audited financials. Where the applicant is a start-up company, Licensing NT will require evidence that adequate financial resources/funding are available as required. This will typically involve the applicant demonstrating that it has sufficient financial resources and will fund the applicant in relation to its business operations.

Licensing NT will require the applicant to (amongst other things):

- pay an application fee of 20,000 revenue units, currently \$25,400.
- establish a place of business in the Northern Territory (often licensees often have a second office in another jurisdiction (typically Melbourne, Victoria)).
- demonstrate that they will provide a 'net economic benefit' to the Northern Territory.
- provide a bank guarantee of generally AU\$200,000; and
- obtain full systems approvals,

as a requirement of being issued the licence.

The application process typically takes 6 to 9 months and can sometimes take longer.

Corporate Bookmaker Licences are typically issued for c. 4 year terms and require renewal after that time.

#### Application and renewal - other

Licences for other forms of gambling products (e.g. Keno or Lotteries) are issued on an irregular basis since these licences tend to be long-dated. Typically such licences would be offered in a multi-phased government licensing process incorporating the submission of expressions of interest followed by a select group being invited to apply for the relevant licence.

### 7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.

Where an individual or corporate entity seeks to obtain a licence to operate a gambling business in any Australian jurisdiction, it is generally required that the applicant and certain individuals connected with the applicant undergo probity checks assessing whether they are a 'fit and proper' person for a licence holder to associate with and are suitable to act' in that capacity.

The definition of an 'associate' (or similar) may vary between states and territories, however it is

commonplace for the term to encompass persons with relevant financial interests and who occupy executive or other positions of influence (and their relatives) including chief executive officers, chief financial officers, directors and others.

The State of Victoria, as an example, requires separate applications for potential associates of a bookmaker licence applicant. To receive approval as an 'associate' the applicant must not have been convicted of a relevant offence and provide a:

- police check;
- credit history report;
- Historical Personal Name Extract;
- recent tax return;
- tax assessment notice; and

detailed information including any past exclusions from a racecourse or a casino, past convictions and any associations with an entity subject to any disciplinary action.

Similarly in Victoria, associates of casino and lottery licence holders are required to provide information demonstrating that they are suitable to act in the capacity of associate to the satisfaction of the Victorian Gambling and Casino Control Commission (**VGCCC**).

Various other types of persons require licences and approval before they can participate in the gambling industry. Again, taking Victoria as an example, certain persons employed by, or working for, a venue operator, the gaming monitoring licensee or a gaming machine services provider require a gaming industry employee licence. Obtaining a licence requires an application and the submission of police certificates and credit report information.

Mandatory training requirements also apply to various types of gambling industry roles across Australia.

### 8. Is advertising of gambling permitted and, if permitted, how is it regulated?

There are comprehensive Federal, state and territory advertising restrictions that apply to the lawful advertising of gambling services. Those advertising restrictions take the form of legislation and regulation in addition to codes of conduct (such as the Australian Association of National Advertisers (AANA) Code of Ethics and the AANA Wagering Advertising and Marketing Code). In addition to the usual responsible gambling warnings, it is an offence to advertise an inducement to open a betting or keno account and, in some jurisdictions, to gamble.

The promotion of gaming machines is also heavily restricted across the country and generally limited to direct marketing to customers participating in loyalty programs.

The Federal government has enacted new 'rules' which restrict gambling advertising and odds promotion during broadcasts of live sport, with one key objective being to limit its exposure to children. These rules have recently been extended to online streaming of live sport.

Lotteries advertising is prevalent and, while not subject to these particular restrictions, is still governed by mandatory requirements.

Separately, the CCA imposes penalties for, amongst other things, misleading and deceptive conduct (including through advertising).

### 9. Are marketing affiliates permitted? If so, are they licensed or regulated?

Marketing affiliates are generally able to be used by gambling businesses. Whilst licensing is not required, some jurisdictions require that gambling operators keep a record of these arrangements and report them to their licensing entity upon request. For example, it is a licence condition on all Northern Territory licensed online wagering providers (**NT Licensees**) to maintain a complete and up-to-date register of all affiliate arrangements and provide such a register to the Northern Territory Racing Commission (**NTRC**) upon request.

In addition to the obligation to record such arrangements in a register, the NTRC has recently developed a draft Code of Practice (**Draft Code**) that, if and when operational, will govern the relationship between NT Licensees and marketing affiliates. The Draft Code proposes to:

- make NT Licensees responsible for the actions of all third parties who they retain to provide affiliate services; and
- impose positive obligations on the NT Licensee to ensure that marketing affiliates, amongst other things, conduct themselves in a proper manner and clearly detail all communication with customers.

The Draft Code is currently being deliberated by the NTRC after an industry consultation period.

A similar regime operates in Victoria. Certain Victorian licensed bookmakers (**Vic Licensees**) are obligated to record their arrangements with 'external service

providers' (which would include marketing affiliates) in a register and provide the register to Racing Victoria (**RV**) upon request. RV can undertake probity checks on the entities listed on the register. If RV considers an entity not to be fit and proper person or otherwise unsuitable, they may direct the Vic Licensee take 'appropriate reasonable action.' Such action may, for example, include a direction to cease or limit their relationship with that marketing affiliate.

In addition to above frameworks, the activities of marketing affiliates are also regulated via the comprehensive Federal, state and territory advertising restrictions that apply to lawful advertising of gambling services. The ACMA has made it a recent compliance priority to target marketing affiliates that advertise or promote illegal online gambling services into Australia, in breach of Federal advertising laws. Separately, there is regulatory guidance in New South Wales, that indicates that a marketing affiliate may commit an offence were it to publish or communicate a prohibited gambling advertisement, if it did so under an agreement with a gambling operator for a benefit. The affiliate themselves could be prosecuted in addition to, or in place of, the gambling operator themselves.

### 10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?

Gambling businesses can incur sanctions for breaching their licence conditions or breaching legislation, regulation or codes, or any combination thereof. This will often vary depending on three factors:

- The licensing body – some states and territories have multiple bodies that can issue licences. The possible sanctions imposed would depend on the framework these bodies operate in and the rules that they impose on bookmakers. For example, in New South Wales there is both Racing NSW and the Greyhound Welfare Integrity Commission who can issue bookmaking licences.
- Conditions of licence – generally, regulators impose a set of general conditions on their licensees. However, provisions generally exist allowing the regulating body to impose additional licence conditions where they see fit.
- Jurisdiction – the jurisdiction in which a bookmaker is licensed is also relevant to possible sanctions and the types of conduct

that give rise to sanctions can differ depending on the laws of that jurisdiction.

For the sake of brevity, we have not itemised each of the eight state and territory jurisdictions and how sanctions can be applied.

At the Federal level, breaches of the IGA carry significant penalties. For example, breaches of certain provisions can result in a civil penalty of up to 7,500 penalty units for individuals (A\$1.665 million) or five times that amount for corporations (A\$8.325 million).

It is important to note that the IGA is stated expressly to have extraterritorial effect (i.e., it applies to overseas operators who breach the IGA by offering to prohibit gambling services into Australia). The ACMA has the power to notify international regulators of contraventions of the IGA by their licensees.

#### **a) Individuals**

Generally, liability is placed on the gambling provider to comply with the various legislative requirements, rather than the customer. However, in some limited circumstances, a customer can also be held liable. For example, in Western Australia, individuals can be penalised if they are a minor who places a bet (see section 22 of the *Betting Control Act 1954* (WA) (BCA)) or if they place a bet on an Australian race with an operator who is unlicensed (see section 23 and 24 of the BCA).

#### **b) Directors and officers**

There are some situations where the criminal conduct of the gambling entity is extended to the directors or officers of the company. For example, under section 53 of the *Unlawful Gambling Act 1998* (NSW) directors or officials also commit an offence if they aided, abetted, counselled, procured, incited, or conspired with others to commit the criminal offence of the gambling entity.

At the Federal level, an example is that the ACMA can notify border protection agencies of the names of directors, principals and officers of operators acting in contravention of the IGA. These names may then be placed on a 'Movement Alert List' thereby disrupting any travel to and from Australia. In addition, there are ancillary liability provisions which mean that in certain circumstances those individuals who aid, abet, counsel, procure, incite, or conspire with others to breach the IGA will incur a civil penalty as if they had breached the IGA themselves.

#### **c) Agents**

There are certain situations whereby persons who aid or

abet criminal activities also commit a criminal offence. At the Federal level, the ACMA's compliance priorities 2021–22 indicates a focus on affiliate services – websites that advertise or promote online gambling services and provide links to them. This focus means that the ACMA will target affiliate services that are breaking advertising laws or helping to provide illegal gambling services in Australia. The discussion above relating to ancillary liability provisions would also likely capture directors, officers, and principals of these affiliate services. At the state or territory level, some advertising restrictions also capture the publication of advertisements by marketing affiliates utilised by licensed operators.

#### **d) Payment processors and internet service providers**

As stated above, there are certain situations whereby persons who aid or abet criminal activity are at risk of committing an offence themselves. This also extends to those involved in money transfers in certain situations. There are currently no legislative requirements placed on internet service providers (ISPs) to implement geo-blocking or other similar measures to prevent Australians from accessing illegal or unlicensed gambling content.

However, the ACMA has the power to request ISPs block access to offshore online gambling operators it considers to be operating illegally in Australia (see section 313 of the *Telecommunications Act 1997* (Cth)). ACMA also maintains a list of the illegal websites it has blocked and publishes this on their website. As of 14 December 2021, there have been 368 websites that have been blocked by the ACMA. Additionally, the ACMA also publishes a list of approved operators that hold an Australian licence to assist Australian consumers who are gambling online to make informed decisions.

### **11. Briefly detail key requirements for licensees.**

Licence requirements differ between the nature of the licence (e.g. wagering, casino, lotteries, gaming or Keno) and by jurisdiction. Licence conditions are supplemented by obligations in legislation, regulation, codes of conduct and, as discussed below, ancillary agreements.

Generally speaking, licences are prescriptive in relation to the locations and channels that a licence holder can utilise to distribute their products and services. They require adherence with systems approval requirements and law, regulations and relevant codes generally, prescribe what types of products and services can be supplied, often mandate training requirements and contain corporate obligations, including in relation to

ownership and governance changes. Casino licences may, for example, also prescribe the maximum and minimum numbers of gaming tables and electronic gaming machines allowed in the casino.

Additionally, licences often also require the maintenance of an agreement with regulators, other government instrumentalities, or the State or Territory. For example, the Victorian casino licence requires the maintenance of an agreement with the Victorian Gambling and Casino Control Commission covering, for example, conditions relating to the company structure of the casino operator, disclosure requirements for the casino operator and approval requirements for games and operating practices.

From a wagering perspective, the Victorian wagering and betting licence holder must maintain and comply with an agreement covering system requirements, performance bond and guarantee obligations, tax obligations, reporting requirements and licence transition processes (among other things).

As discussed above, licensees are generally required to be “fit and proper” and of good repute and sound and stable financial backgrounds. A lotteries licence in NSW requires, for example, that applicants demonstrate, among other things, that they have or can obtain persons with sufficient experience in the management and operation of a lottery business, that they have sufficient technical expertise and resources to conduct lotteries of the kind to be conducted and that they have sufficient business ability to establish and maintain a successful lottery business.

## 12. Briefly detail key anti-money laundering requirements.

Under the Anti-Money Laundering and Counter-Terrorism Financing Act (Cth) (2006) and corresponding rules (collectively the AML/CTF Law), gambling operators falling under the regime in Australia are required to comply with several strict reporting and procedural obligations, including, but not limited to:

- a) verification and ongoing due diligence of the identity of all customers who open an account with the operator;
- b) maintaining an anti-money laundering and counter-terrorism financing program (AML/CTF program), which outlines how they will comply with their obligations under the AML/CTF Law;
- c) regular reporting to the Australian Transaction Reports and Analysis Centre (AUSTRAC), the body responsible for enforcing the AML/CTF Law, of all

suspicious matters, threshold transactions (involving cash), compliance reports and international fund transfers; and

d) keeping records of all transactions, electronic funds transfers, customer identification procedures, AML/CTF Programs and due diligence assessments.

Penalties for non-compliance with the AML/CTF Law are significant. In 2015, AUSTRAC filed an action in the Federal Court against three Tabcorp Group companies for ‘extensive, significant and systemic non-compliance’ with the AML/CTF Law. In March 2017, the Federal Court approved a settlement agreement under which Tabcorp agreed to pay to AUSTRAC a A\$45 million penalty (and costs) for contravention of the AML/CTF Law. In 2019, various allegations that Crown Resorts and its associates had engaged in money-laundering, and possible links to organised crime, were raised by various media outlets. As a result, the ILGA convened an inquiry to consider the suitability of Crown Resorts and its NSW subsidiary to hold a casino licence. The inquiry ultimately decided that Crown Resorts was not suitable and recommended in respect of Crown Resorts and its NSW subsidiary that several measures that should be implemented to achieve suitability (see Section VII). Additionally, in October 2020, AUSTRAC also identified potential non-compliance with AML/CTF Laws by Crown Resorts in relation to its casino in Melbourne. This included concerns over customer due diligence and adopting, maintaining, and complying with an anti-money laundering and counter-terrorism financing program. AUSTRAC has commenced civil proceedings for numerous alleged breaches of the AML/CTF Laws.

## 13. Briefly detail key responsible gambling (or safer gambling) requirements.

All gambling-related licences issued by a State or Territory are subject to strict requirements relating to consumer protection, responsible gambling and harm minimisation. Included in this are restrictions at a State and Territory level in relation to gambling advertising and also inducements to open an account and, in some jurisdictions, to gamble or gamble more frequently.

In addition, the Federal government has introduced amendments to the IGA to restrict gambling advertising and odds promotion during broadcasts and online streaming of live sport, with more stringent restrictions occurring during the hours of 5.00am to 8.30pm.

In November 2018, all State and Territory gaming Ministers agreed to a National Consumer Protection Framework (**NCPF**) for online wagering, which has been progressively implemented with the objective of having



a nationally consistent approach to harm minimisation measures, such as a prohibition on inducements (such as first deposit bonuses) being offered to a prospective customer to open a betting account, mandatory opt-out pre-commitment and a national self-exclusion register (which is expected to be established in late 2022).

### Match fixing and organised crime

Match-fixing is dealt with under relevant criminal legislation in most jurisdictions, (e.g., in New South Wales, Part 4ACA of the Crimes Act 1900 (NSW)). Under legislation in most Australian jurisdictions, wagering operators are required to enter into integrity agreements with each relevant racing controlling body and the leading sporting bodies on which they offer betting products.

These agreements allow the operator to use the statistical information relating to the sporting or racing events (and participants) in return for a fee and on the condition that they agree to cooperate with these bodies by providing information about their customers' betting patterns and behaviour to assist in the investigation of match-fixing. In August 2017, the federal Minister for Sports, the Honourable Greg Hunt, announced a review of Australia's sports integrity arrangements to be led by the Honourable James Wood AO QC (Wood Review). As part of the Federal Government's response to the recommendations that arose from the Wood Review, the Department of Health was given the responsibility of developing a federal regulatory framework for sports integrity. This is known as the Australian Sports Wagering Scheme (**ASWS**). The purpose of the ASWS is to safeguard the integrity of Australian sport and provide a sports integrity framework for sports wagering regulation at the federal level.

### 14. Briefly detail shareholder reporting and approval threshold(s).

Ownership restrictions and thresholds differ between licence types and jurisdictions.

For example, Corporate Bookmakers licensed in the Northern Territory are required to advise the Commission of direct or indirect ownership interests of 10% or more and also to seek approval prior to making changes to share capital structure or ownership. Inquiries will be conducted to determine whether the person or associate is suitable to hold or control such interest. The Commission may require interests to be divested.

In Victoria, all shareholders and directors of an applicant for a corporate Club Bookmaker's Licence must be

registered bookmakers who have been approved by the VGCC to conduct the bookmaking business of the company.

There are also statutory restrictions applicable to some operators such as TAB Limited, the NSW wagering licensee. Under the *Totalizator Act 1997* (NSW), a legislative amendment would be required to allow any bidder to acquire more than 10% of the shares in it or its ultimate holding company

As referenced above, shareholdings can enliven "associate" requirements requiring relevant persons to undergo probity assessment and to be approved by the relevant regulator.

### 15. Briefly detail the regulator's enforcement powers, including sanctions.

#### Enforcement Activity in the Gambling Sector

Australia has a comprehensive gambling regulatory environment across federal and state and territory levels, however, inconsistency in requirements across jurisdictions undermines its efficacy. From a wagering perspective, there are three common enforcement trends, each of which is consistent with a policy focus on harm minimisation.

#### a) Advertising

The regulator in New South Wales (NSW), Liquor and Gaming NSW has been focused on pursuing wagering operators that publish gambling advertising that it considers breaches state legislation since circa 2012. We expect this focus to continue throughout 2022 and into 2023, particularly given the recently introduced capacity to issue penalty infringement notices. NSW is widely regarded as having the strongest gambling advertising restrictions and associated penalties in Australia (which include potential director and other corporate officer liability). Several prominent bookmakers have or are facing, court action in NSW for alleged advertising breaches involving gambling inducements. In NSW (and other jurisdictions), it is an offence to publish or communicate any inducement to participate or to participate frequently, in any gambling activity. This includes an inducement to open a betting account.

The maximum penalties that can be applied in NSW for infringements were recently increased to AUD\$110,000 for corporations and AUD\$11,000 for individuals.

#### b) Illegal gambling websites

The Australian Communications and Media Authority

(ACMA) is responsible for enforcing the *Interactive Gambling Act 2001 (Cth) (IGA)*. The IGA prohibits certain online gambling services and unlicensed operators, including those that operate offshore, from offering services into Australia.

The ACMA has been proactive in its strategic engagement with international regulators and adopted a robust enforcement approach. In mid-2022, the ACMA advised that it had requested internet service providers to block more than 500 illegal gambling websites.

A key focus for ACMA has been combating illegal online casinos from being offered into Australia. More recently, this focus has expanded to targeting affiliate advertising websites that promote and drive traffic towards illegal gambling websites.

### c) Terms and conditions

The Australian Competition & Consumer Commission (ACCC), in concert with state and territory fair trading regulators, is responsible for enforcing Australia's consumer protection laws. Since July 2010, there has been legal protection for consumers against unfair contract terms with businesses. This includes where businesses, including wagering operators, use standard form contracts in which there is no opportunity for the consumer to negotiate terms.

Recently, the Northern Territory Racing Commission (NTRC), which regulates many of Australia's corporate bookmakers licensed in the Northern Territory, requested all licence holders to review their existing terms and conditions, citing concerns regarding the ability for consumers to understand the terms and conditions clearly, fair dispute resolution and power imbalances between the parties.

## 16. What is the tax rate?

The state and territory taxes which apply to gambling products depend upon the relevant licence under which the product is being offered, the type of product and the jurisdiction in which the product is offered.

State and territory taxation on casinos is determined on a case-by-case basis (typically during negotiations with the relevant state or territory government at the time). By way of example, putting aside a Federal company tax of either 25% or 30% on profits and a goods and services tax (GST) of 10% on gross revenue, the sole casino licensee in Victoria paid a multi-million-dollar licence fee to the State for the right to operate the only casino. In addition, that licensee currently pays the State a tax of 21.25% of its gross gaming revenue from table games

and 31.57% of its gross gaming revenue from gaming machines in respect of regular players, together with a 1% community benefit levy. The sole casino licensee also pays a tax of 9% on 'high roller' gaming revenue, together with a 1% community benefit payment. Finally, the sole casino licensee pays an additional casino 'super tax' based on gross gaming revenue, which increases depending upon gaming revenue levels, with a maximum tax payable of 20%. The relevant taxation amounts are reduced by the GST paid by the casino licensee in relation to these services.

Subject to some additional requirements for Retail Wagering operators and On-course Bookmakers, the primary form of gambling taxation on wagering in Australia takes the form of point of consumption-based taxes. This means that wagering service providers pay tax in the jurisdiction in which their customers are located as opposed to the historical position whereby taxes were paid only in the licensing jurisdictions. For example, NSW Government has imposed a 15% POCT on 'net wagering revenue' exceeding a threshold of AUS \$1 million in respect of all bets placed by NSW residents through the Retail Wagering Licensee, Corporate Bookmakers and other relevant betting operators licensed in Australia. The wagering and betting taxes payable in NSW by the relevant Retail Wagering Licensee prior to the introduction of the POCT have remained in place (unlike, for example, in Vic and Qld), with corresponding POCT offsets.

Wagering taxes have recently been increased in a number of jurisdictions including Queensland which has announced an additional 5% levy from 1 December 2022 to the pre-existing 15% POCT on 'net wagering revenue' over AUS \$300,000.

All states and territories have now introduced a POCT, apart from the Northern Territory. In the Northern Territory, taxes remain payable by NT-licensed wagering operators (including Corporate Bookmakers and the Retail Wagering Operator).

Retail Wagering Operators, Corporate Bookmakers and On-course Bookmakers are also required to pay race field fees/product fees to race controlling bodies and sports controlling bodies, respectively, in relation to bets taken on their product. These fees are generally a percentage of turnover, or the greater of a percentage of turnover and gross margin and depend upon the relevant product.

Lotteries are subject to relatively high State and Territory taxation rates. For example, in the key States of Vic, NSW and Qld, respectively, the rates are 79.40% of player loss where GST is payable and 90% of player loss where GST is not payable, 76.918% of player loss

(player subscriptions net of prize liability) less GST payable on subscriptions and sales commissions and 73.48% of monthly gross revenue for declared lotteries (with lower rates for instant scratch-its and soccer pools). By contrast, taxation of keno across the same three key States is 24.24% of player loss, 8.91% of player loss (increasing to 14.91% where player loss exceeds AUS \$86.5 million) and 29.40% of monthly gross revenue after deducting any casino commissions. The various States also set minimum player returns.

State and territory taxes on gaming machine revenue are complicated and vary significantly. By way of example, in Vic, where the average revenue per gaming machine is greater than AUS \$12,500 per month, the tax rate is 54.20%.

There is also a Federal Goods & Services Tax of 10% payable on net revenue from gambling products; however, state and territory taxation rates sometimes take this into account, and it is offset against taxation payable to state and territory governments.

### **17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.**

#### **The Implementation of the National Consumer Protection Framework (NCPF)**

In November 2018, all state and territory gaming ministers agreed to a National Consumer Protection Framework for online wagering, with the stated objective of having a nationally consistent approach to harm minimisation measures in the wagering industry. As discussed, in Australia, gambling is regulated at a federal, state and territory level, which has resulted in inconsistency and associated regulatory burden and duplication between jurisdictions.

The NCPF is comprised of ten consumer protection measures intended to apply to wagering service providers that offer online and telephone betting services:

- a national self-exclusion register.
- a voluntary opt-out pre-commitment scheme.
- a prohibition on lines of credit offered by wagering providers.
- a harmonised regime for offering inducements to participate in gambling activities.
- a requirement to provide activity statements.
- a requirement for accessible account closure

- options to be readily available.
- consistent responsible gambling messages and counselling services.
- staff training in consumer protection.
- reducing the 90-day customer verification period; and
- a prohibition of links between online wagering operators and payday lenders.

The NCPF has been introduced progressively, with most of the changes now implemented, albeit with some differences as between the States and Territories.

#### **The National Self-Exclusion Register**

One of the most awaited aspects of the NCPF, the introduction of a national self-exclusion register, is yet to be implemented but has been progressed during 2022. This follows the passing in December 2019 of the *Interactive Gambling Amendment (National Self-exclusion Register) Act 2019* (Cth) and the *National Self-exclusion Register (Cost Recovery Levy) Act 2019* (Cth), which enable the establishment and operation of the register and deal with important issues, including the security of information.

As opposed to the current disjointed approach that requires people that want to self-exclude to contact multiple operators, involving undue friction and leaving potential vulnerabilities, the new regime provides for a “one-stop shop” self-exclusion service from all betting operators registered in Australia offering online or telephone betting. The self-exclusion can be temporary (with a minimum period of three months) or permanent. Registered people will also have the option to revoke or extend their period of exclusion.

Under the new regime, licensed betting operators will be prohibited from offering their services to such individuals, sending them advertisements/promotions, making (or causing to be made) any telemarketing calls to such persons or sharing their private information for marketing purposes. If a licensee breaches these prohibitions without an available defence, it will face penalties of up to 750 penalty units for corporations per day (equivalent to AUD\$787,500).

On 23 June 2021, the ACMA, which is responsible for the register’s development, announced that it had partnered with Engine Australia (“Engine”) to complete and deliver the register which is called “BETSTOP”. Engine previously developed and delivered the self-exclusion scheme in the United Kingdom known as GAMSTOP. ACMA has advised that the service will launch prior to the end of 2022 but it is unclear at the time of writing whether that objective will be met.



Costs for the establishment and maintenance of the register are to be borne by the industry.

## 18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?

### Cashless Gaming Trial in New South Wales

Aristocrat Gaming and the Wests Newcastle club are conducting the first trial of cashless gaming machines at a venue in NSW with the support of the local regulator. The trial involves cashless payments being used for all club services, including electronic gaming machines.

In announcing the trial in 2021, the government advised that it supports the fact that the digital proposal is linked to identity and a bank account, and that harm minimisation settings are involved. The technology, which commenced operating as part of the trial in October 2022, enables patrons to set spend and time limits for play, speak to a staff member, or even exclude themselves from the club, in addition to using their own mobile wallet to pay for a meal, membership and gaming services.

Customers will be able to reload their cashless gaming card only off the gaming room floor and utilise an approved bank account. The card cannot be linked to a credit card.

Issues related to money laundering and problem gambling have recently been prominently exposed through inquiries in NSW, conducted under section 143 of the *Casino Control Act 1992*, and Royal Commissions into the casino operator and licence in Victoria and Western Australia, with cashless technologies seen as an important way of identifying and minimising these risks. Crown Resorts and The Star Entertainment Group have agreed to work with the NSW regulator to introduce cashless gaming at their casinos to help tackle money laundering, but no specific timelines have been given.

### Gaming pre-commitment

In September 2022, the Tasmanian government announced that it will implement a State-wide player card-based gaming system with pre-commitment and cashless gaming requirements to be implemented.

Players will need to utilise a card to operate a gaming machine with a pre-set default loss limit of AUS \$100 per day, AUS \$500 per month and AUS \$5,000 per year. The Tasmanian Government are targeting a December 2024 implementation date.

Various gambling commentators have observed that other jurisdictions may follow suit.

### Australian Sports Wagering Scheme

Sports Integrity Australia released the Australian Sports Wagering Scheme (ASWS) Consultation Regulatory Impact Statement (Statement) on 30 November 2021.

The objectives of the ASWS are to:

- Streamline sport integrity aspects of sports wagering regulation to provide clarity, transparency and consistency at a national level and ensure sports wagering occurs in a framework that protects the integrity of sport;
- Strengthen the link between Commonwealth Government funding and sport integrity outcomes;
- Encourage the development of integrity capability within sporting organisations and facilitate sporting organisations' access to revenue streams from wagering on their sport; and
- Develop a robust integrity framework for National Sporting Organisations, event controllers and wagering providers.

The purpose of a Statement is to undertake a rigorous process to reach an evidence-based policy solution to an issue with a clear rationale for government intervention to address the problem with the current situation.

Based on feedback received and through further consultations, a Statement will be prepared. The Statement will provide an evidence base and recommendations for consideration in making their policy decision around the ASWS.

### Casino reforms

Systemic risk, governance and cultural issues and deficiencies have been identified across the Australian casino sector following revelations of operator misconduct, particularly in relation to the Crown and The Star casinos. The casino industry, including regulatory bodies and frameworks, will remain an area of focus for governments and other stakeholders, and further reforms for the sector are likely given the number and nature of established and alleged governance and compliance failures. An overview is set out below.

**New South Wales Inquiry:** Following well-publicised allegations of criminality by Crown patrons, this inquiry, which was overseen by former Supreme Court judge Patricia Bergin SC, was established in August 2019 by the Independent Liquor and Gaming Authority (ILGA) in

New South Wales (NSW). It was largely concerned with alleged anti-money laundering/counter-terrorist financing (AML/CTF) and governance-related shortcomings across Crown's Melbourne and Perth casinos and did not focus on the NSW jurisdiction or the only operational casino in NSW, The Star Casino.

The inquiry received and heard extensive submissions and evidence, including from the public and via public hearings involving Crown executives, directors, regulators and others.

Commissioner Bergin found Crown unsuitable to operate its Sydney Barangaroo casino. The commissioner did, however, leave open a pathway for Crown to achieve suitability should sufficient changes occur, including board renewal, the preparation and delivery of a detailed remediation plan to ILGA and the strengthening and monitoring of anti-money laundering controls that ILGA might consider when making its decision.

The NSW Inquiry report made 19 recommendations, including proposed reforms to the regulation of casinos in NSW, including the creation of a standalone independent Casino Commission with extensive powers akin to those of a standing royal commission. A further significant recommendation was that NSW legislation be amended to ban NSW casinos dealing with junket operators. The NSW government announced that it accepts all recommendations and will move to implement revised regulatory structures in the state.

After undertaking various remedial activities, Crown was granted a provisional permit to open its gaming floor in June 2022.

**Victorian Royal Commission:** Given the nature of the issues aired during the NSW Inquiry, in late February 2021, the governor of Victoria appointed Ray Finkelstein AO KC as commissioner and chairperson of a Victorian Royal Commission into the casino operator and licence in that state. Crown Resorts operates the Crown casino and entertainment facility in Melbourne, which is one of the city's most visited attractions for tourists and residents alike and is a significant employer.

Crown admitted to various matters raised during the commission, including:

- underpaying state gaming taxes;
- allowing what was purported to be money for hotel services to be used for gambling;
- allowing customers to gamble for a prolonged period; and
- not cooperating as required with the Victorian gambling regulator.

The Commissioner's report was delivered to the governor of Victoria on 15 October 2021. Among the key findings and recommendations, the commissioner determined that Crown was unsuitable to operate its flagship Melbourne resort but did not recommend that Crown's licence be cancelled, citing the considerable harm to the Victorian economy and innocent third parties that would arise from a cancellation and noting that significant steps taken towards reform, including the appointment of a new board and senior executive team. Instead, the commissioner effectively provided Crown with two years in which to prove that it is suitable to operate that casino.

Ultimate decision making during this period now rests with a 'special manager', Stephen O'Bryan KC, who has been appointed to oversee Crown's operations and to report to the Victorian regulator at regular intervals on Crown's performance against reform efforts. Following the conclusion of the two-year period, the regulator will make its decision as to whether it is "clearly satisfied" that Crown has returned to suitability, having regard to the reports from the special manager and the other inquiries mentioned in this article.

**Perth Casino Royal Commission:** On 5 March 2021 a royal commission into Crown Perth and its suitability to continue to hold a casino gaming licence in Western Australia was established. The commissioners - Neville Owen AO, Lindy Jenkins and Colin Murphy PSM - examined the regulatory framework in Western Australia for casino gaming and assessed the performance of the Gaming and Wagering Commission, the regulatory body with responsibility for monitoring Crown Perth's compliance.

In an interim report tabled in the Parliament of Western Australia in August 2021, the commissioners advised that they were investigating alleged conflicts of interest between departmental officers and casino employees, in addition to whether criminal organisations were likely to have laundered money at Crown Perth and other matters.

A final report with findings and recommendations was presented to the minister on 4 March 2022 and then tabled in Parliament. Crown has been found to be unsuitable to hold a gaming licence in Western Australia although, rather than its licence being revoked, the Royal Commission has proposed a number of changes which Crown Perth must undertake. These are significant reforms.

**Review of The Star (Sydney):** A review of The Star and its Sydney casino commenced in November 2021 and was undertaken by Adam Bell SC. Adam Bell's findings and recommendations were handed down on 31

August 2022.

The terms of reference for the review included an assessment of suitability and an examination of the extent to which The Star was compliant with legislation, licence conditions and related agreements and an assessment of the administration of systems to ensure that operations were conducted honestly and free from criminal influence or exploitation. The review also assessed, among other things, the implementation and administration of gaming harm minimisation programs and the management of VIP patrons, high rollers and international patrons at The Star.

In finding that Star Entertainment was not suitable to be concerned in or associated with the management and operation of a casino in NSW, Adam Bell SC cited a number of practices including the use by high roller patrons of China Union Pay (CUP) debit cards to fund gambling which was in breach of Chinese laws and not appropriately disclosed to banking partners, permitting the Suncity junket to operate in the casino, including with a cash cage, and giving rise to money laundering risks and in breach of casino licence conditions and an inappropriate approach to governance and risk. The review also noted evidence of patrons gambling at The Star for long periods of time, including for more than 24 hours, with no intervention which contributed to a recommendation that carded play be compulsory at The Star for all gambling (requiring that patrons are identified and that their exclusion status (if any) is enforced).

On Monday 17 October 2022, the NSW Independent Casino Commission (NICC) announced that The Star has been fined A\$100 million under a recently revised legislative penalty regime. The fine represents the maximum penalty that can be applied and a record fine which is higher again than the A\$80 million fine levied on Crown Melbourne by the Victorian Gambling and Casino Control Commission (VGCCC) earlier in May 2022 although the VGCCC did advise that it was considering further disciplinary proceedings against Crown related to the other findings of the Royal Commission. The Star Sydney's licence will be suspended with effect from 21 October 2022 but, with the NICC citing considerations regarding the impact on The Star's workforce and recent leadership changes, operations will continue during the period of suspension albeit under the oversight of an external manager, Nicholas Weeks of Wexted Advisers. The Star Sydney will have an opportunity to establish that it has undertaken the reforms necessary to become suitable to hold a licence.

**External review of the Queensland operations of The Star Entertainment Group:** Also in early October

2022, the Queensland Government issued its response to a review of the Queensland operations of The Star Entertainment Group conducted by Robert Gotterson AO KC. The review followed the New South Wales review referenced above and received evidence regarding The Star's anti-money laundering processes, approach to gambling harm minimisation, management of VIP patrons, high rollers and international patrons, the use of CUP facilities to facilitate gambling by Chinese nationals and whether patrons excluded in NSW were encouraged or incentivised to attend The Star's Queensland casinos.

The Queensland Attorney-General and Minister for Justice has subsequently formed the view that The Star is unsuitable to hold a licence in Queensland. Similarly to NSW, The Star will be given an opportunity to show cause and respond to that finding following which the Government will determine what disciplinary action will be taken. Disciplinary action could include fines, a suspension or cancellation of The Star's licence and/or the appointment of a special manager to oversee and supervise operations and reform efforts (as has been the case in Victoria).

The Government has announced that it supports in principle all 12 recommendations of the Gotterson Review which include:

- amending legislation to allow for the appointment of a Special Manager to increase supervision and integrity of operations;
- instituting periodic investigations into the suitability of all Queensland casinos paid for by the casino;
- requiring casino licensees to pay a supervision levy as a condition of their licence;
- introducing a mandatory Code of Conduct for Safer Gambling with significant fines for non-compliance;
- requiring casinos to make reasonable endeavours to exclude persons who are subject to the exclusion directions of Police Commissioners in other states. This recommendation followed findings that The Star has actively encouraged such excluded individuals to gamble at its Queensland facilities; and
- implementing a recommendation to improve gambling harm minimisation, including mandatory carded play and limits on cash transactions.

The Government has also announced that it will raise the maximum penalty that can be imposed on a casino to A\$100 million.

**Independent review into SkyCity:** Following the commissions of inquiry undertaken in NSW, Victoria and Western Australia, the South Australian regulator announced in July 2022 that an independent review would be taken into SkyCity, the operator of the Adelaide casino. The review will investigate, among other things, the suitability of SkyCity to hold the casino licence and of its parent company to be a close associate of the licensee and related matters. A written report of Brian Martin AO QC's findings is due to be delivered by 1 February 2023.

**New developments:** The Casino and Liquor Legislation Amendment Bill 2022 (Vic) has recently been passed, granting Victoria's casino regulator, the VGCCC, enhanced powers. The legislation incorporates some of the recommendations from the Royal Commission into Crown Melbourne, with key changes including the following:

- Casino inspectors have been given greater access to casino records and surveillance equipment;
- Casino staff are now required to assist inspectors to access and operate surveillance equipment monitoring the gaming floor'
- The powers of the VGCCC in relation to gambling harm minimisation have been enhanced;
- The VGCCC can now take action against Crown Melbourne for a single breach of the Code of Conduct; and
- Liquor regulation has been transferred to the Department of Justice and Community Safety to provide for greater regulatory focus.

These reforms are in addition to legislation passed in 2021 which increased the maximum penalty that the VGCCC can impose for disciplinary action, with fines increasing from A\$1 million to A\$100 million.

Legislation to address Royal Commission recommendations passed through the Western Australian Parliament in September 2022 in the form of the *Casino Legislation Amendment (Burswood Casino) Act 2022 (WA)*. The legislation provides the Minister and Gaming and Wagering Commission with greater powers to implement the recommendations, significantly increases maximum penalties for non-compliance to A\$100 million and provides for an Independent Monitor to oversee remediation processes within the casino. We anticipate similar changes in relation to casino legislation in New South Wales and Queensland.

AUSTRAC have commenced proceedings in the Federal Court against Crown Melbourne and Crown Perth for alleged serious and systemic non-compliance with

AML/CTF laws and are progressing their enforcement investigation of The Star Sydney.

## 19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?

**Online wagering:** The online wagering sector in Australia has remained buoyant, with total spend reaching A\$6.9 billion in 2020. Wagering operators have heightened their efforts in relation to customer retention and acquisition strategies.

According to an Australian Institute of Family Studies survey of more than 2,000 Australian punters in July 2020, one in three participants – mostly young men – registered new betting accounts during COVID-19 and the number who visited gambling sites more than four times a week grew from 23% to 32%.

According to the findings from the 2021 the Australian Communications and Media Authority (ACMA) Annual Consumer Survey into Online Gambling Australia (February 2022), more than one in 10 Australian adults (11%) had gambled online in the six months to June 2021, up from 8% in 2020. The 2021 survey also asked respondents to report how frequently they gambled before the pandemic and during the strictest COVID-19-related restrictions in their area. While the majority of online gamblers (77%) reported the same frequency of gambling activity in June 2021 and before the pandemic, 16% indicated a higher frequency in June 2021 than before the pandemic.

Gambling advertising expenditure has also increased significantly in recent years. According to Nielsen Media Research, the gambling industry's spending on advertising increased from A\$90 million in 2011 to A\$252 million in 2020. Australia's largest online bookmaker, Sportsbet, spent A\$139 million in 2020, accounting for 55% of total gambling industry advertising spend.

Recent increases in gambling taxation have the potential to impact on industry profitability and it will be interesting to observe how operators adapt to the new environment.

**Casinos and gaming:** Public and political sentiment regarding this sector of the industry has been impacted by the findings of the recent casino-related inquiries and commissions referenced above in relation to money laundering, criminal infiltration and consumer harm. As such, we anticipate it will be the subject of increased scrutiny from regulators (including AUSTRAC) and reform over the short to medium term.

As noted earlier, a shift towards mandatory pre-commitment and cashless gaming play whereby patrons fund gambling from digital wallets which require a person's identity to be confirmed is a trend that is likely to be applied broadly in relation to casinos and, potentially, other gaming venues.

**20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?**

Australia offers a well-regulated gambling licensing environment with established pathways to market for prospective online wagering operators in particular. While the regulatory landscape is complex given the differences in regulation between the various states and territories, licensing processes and approaches are clear and well-trodden with a number of foreign-owned operators and start-ups establishing themselves successfully and gaining market share in the jurisdiction.

Participation rates in gambling in Australia are high by global standards with Australia being cited as having the highest per capita gambling losses in the world followed by Hong Kong and Singapore<sup>1</sup>. Gaming continues to be the largest category of gambling turnover followed by racing and sports betting.

Gambling is an important industry and contributor to Australian GDP in terms of employment, taxation, and direct tourism value to the economy. According to

statistics quoted by the Australian Gaming Council, the industry employs approximately 221,800 people and raised \$6.6 billion in taxation revenue over the 2018-2019 financial year.<sup>2</sup>

Online gambling is the fastest growing gambling segment. In 2022, the ACMA found that more than one in 10 Australians had reported participating in online gambling at some stage in the previous 6 months which was up from 8% in 2020<sup>3</sup>. The growth in online gambling in the jurisdiction has continued over recent years and accelerated with the advent of COVID-19 in 2020.

Significant reforms to address problem gambling and money-laundering concerns have recently been enacted with more to follow through measures such as the National Consumer Protection Framework for Online Wagering, mandatory pre-commitment for gaming machines and limitations on the use of cash in casinos. It is hoped that these will underpin a sustainable and responsible gambling environment.

**Footnotes**

- 1. As cited in e-brief, NSW Parliamentary Research Service March 2020
- 2. Australian Gaming Council, 'Economic Contribution', <https://austgamingcouncil.org.au/fact-centre/economic-contribution>
- 3. ACMA, *ACMA research reveals slight increase in Australians gambling online*, February 2022, <https://www.acma.gov.au/articles/2022-02/acma-research-reveals-slight-increase-australians-gambling-online>

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